

T TAB

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**



Lenworth Alexander Hyatt
P.O. Box 4864
Hollywood, FL 33083 - 4864

10-27-2003
U.S. Patent & TMO/TM Mail Rpt Dt. #22

Re: Serial No. 76/242,606 / Opposition No. 151,757
Filing Date: April 17, 2002

**REPLY TO OPPOSITION TO MOTION FOR RELIEF FROM JUDGEMENT
AND
MOTION FOR A RETRIAL UNDER FRCP 55 (c) AND FRCP 60 (b)**

On August 8, 2003 the attorneys for Opposers mailed opposition to Applicant motion filed May 28, 2003. Applicant hereby rebut Opposers argument, and proves why relief should be granted.

Applicant defends the claim that the ruling was bias in favor of Opposers, and prejudice toward Applicant.

The claim that the Board issued its decision due to a racial preference is defended.

The Applicant's profile of the ethnic background of Board members, Opposers and their counsel is based on research, and the Surnames of all parties.

The ethnic background of Applicant is easily established by Applicant's profile on TESS data base "INDIVIDUAL JAMAICAN". If the attorneys for Opposers could not tell Applicant's ethnic background based on this profile, then how were they able to be qualified to become attorneys?

The Applicant reaffirms the fact that the alleged paper was never seen by Applicant.

The quotes from the ruling of the board should be set aside. This ruling was made because the attorneys deceived the Board. The attorneys used the certificate of service as prima facie proof of the service of the alleged paper knowing fully well that the correspondence was returned to them sealed, and unopened. The Applicant had contested that the alleged papers were never seen. The attorneys quoting from the ruling, "The board notes Applicant does not contest that he received the discovery requests", was due to the fact that Exhibit A, "Defense against Motion for summary Judgement", was never seen by the Judges

In the attorneys for Opposers defense against the Applicant's Motion to set aside

Judgement argued that the Board accepted the certificate of service as proof that Applicant received the alleged paper. The judges have no legal authority to rule that the certificate of service is proof that the Applicant was aware of the alleged requests. In fact the ruling states, "The board accepts opposers' certificate of service as prima facie proof of service". The acceptance of the certificate of service as prima facie proof of service is not proof that Applicant saw the alleged requests. According to the TBMP, "When service of a paper is made by mail, pursuant to 37 CFR § 2.119 (b) (4), the Board considers the mailing date of the paper to be the date the paper is deposited with the United States Postal Service, i.e., the date when custody of the paper passes to the Postal Service". The certificate of service in accordance with TBMP rule may be accepted as prima facie proof of the date when custody of the papers passed to the Postal Service. This cannot be accepted as prima facie proof that the Applicant took custody of the alleged paper, and, or, was aware of the alleged requests.

The board ruling, "In view of the above, the requests for admission served on applicant stand admitted, including applicant's admission that his mark is confusingly similar to opposers' mark", should be set aside because 37 CFR § 2.119 (a) can only be used as a Trademark Rule accepting prima facie proof of the service of the certificate of service as proof of the alleged date the paper is deposited with the United States Postal Service, i.e., the date when custody of the paper passes to the Postal Service. This cannot prove that the Applicant ever took custody of the papers, and, or was aware of the alleged requests.

Pursuant to 37 CFR § 2.119 (b) (4) in addition to serving papers to an inter parties proceeding before the Board by first-class mail, such papers may also be certified or registered. The attorneys for Opposers did not indicate that they also certified, and, or registered the alleged paper. The Applicant should not be penalized for any negligence in the conduct of the attorneys. The attorneys having alleged to mailing the paper by first-class mail without certifying, and, or registering them demonstrates how unprofessional they are, or was it a technical error? Due to the alleged importance of the paper, the attorneys should have also certified, and, or registered the paper. Had the attorneys at St. Onge Steward Johnson & Reens took the time to mail the alleged paper also certified, or registered then the Applicant could not mistook the mail as solicitation from a law firm and returned it to sender unopened, and sealed. Certifying, or registering the alleged papers would have alerted the Applicant that the alleged correspondence was of some importance. The Postal Certification, or Registered Slip would have been proof that the Applicant took custody of the alleged paper, and therefore should be aware of the alleged requests. The Board therefore has no evidence to use as prima facie proof that the Applicant ever took custody of the alleged paper, read the content and willfully did not respond to requests. The Boards ruling, "Based on the evidence before us, we find that applicant failed to respond to opposers' first set of request for admission". The ruling in the default is flawed and therefore should be reconsidered, and be set aside.

The attorneys in their opposition to motion stated, "Since Mr. Hyatt was aware of the instant opposition, it behooved him to accept mail from Opposers' counsel". The evidence on record was that the attorneys on record for Opposers was Timothy A. French at Fish & Richardson. The Applicant was not obliged to accept any correspondence from any unknown law firm. Let it be noted that the attorneys from the law firm St. Onge Steward Johnson & Reens did not serve Notice of Appearance until August 15, 2003 (See Exhibit B). The attorney of record for Opposers during the time the alleged papers were mailed, had not served withdrawal from employment to Applicant until September 20, 2003 (See Exhibit C). The Applicant therefore was never aware that the attorneys for the Opposers had been changed. According to the alleged certificate of service, it would have been deposited in the custody of the United States Postal Service on July 22, 2002 (See Exhibit D).

The attorneys questioning, "how is it that Mr. Hyatt has received every other piece of correspondence from both the Board and the Opposers, but the discovery requests just happened never to have been received?" were to mislead, and deceive the Board. The attorney knew fully well that the alleged correspondence was returned to them unopened and sealed.

The attorneys for Opposers rejection of Applicant's offer to amend the mark is clear indication of their intent never for an amicable resolution. They were committed to their attempt to use deceit (fraud) to block the registration of Applicants Mark.

The attorneys for Opposers notably did not respond to Applicant's statement that "The attorneys for Opposers have not , and could not declare that the allege Discovery requests were not returned to them sealed . It is the recollection of the Applicant that all correspondence from soliciting attorneys on, or , around the time Opposers' Attorneys alleged to have mailedout Discovery requests were all returned to senders. Applicant had not raised the possibility of unknowingly returning any paper to Opposers' attorneys, because Applicant was truthful in stating as a fact that no Discovery requests were ever received, and ,or ignored". The attorneys for Opposers having ignored this statement has admitted that this statement is truthful, and therefore cannot be refuted. If the attorneys had refuted this statement they would be lying, and therefore be guilty of perjury.

Pursuant to FRCP 60 (b) Motion for relief from final judgement may be set aside by; Mistakes, Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud, etc.

(a) The Applicant admits to committing a mistake when the allege paper was unknowingly returned due to the fact that the Applicant was never aware that the counsel for the Opposers had been changed until late August to late September (See Exhibit B, and Exhibit C).

(b) The Applicant unknowingly returning the correspondence from the attorneys at St. Onge Steward Johnson & Reens is admitted as an act of inadvertence.

(c) The returning of the alleged request documents to the attorneys at St. Onge Johnson Steward & Reens sealed without opening it to view the content is admitted as an

priority, and likelihood of confusion"; "We would have reached this conclusion even if we did not treat the requests for admission as admitted"(footnote).

(b) "As to priority, there is no genuine issue that Opposer Columbia Insurance Company owns the pleaded Registration No. 1,981,495".

(c) "Turning to the issue of likelihood of confusion, we find no genuine issue as to the similarity of the parties' respective marks in this case".

The Applicant could not be judged to "admit that applicant's mark is confusingly similar to opposers' mark", because the Applicant never saw the alleged requests. The ruling of the judges under Section 2 (d) should be reconsidered, and be set aside.

The Applicant is rebutting the evidence as presented to the Board 'the Certificate of Service' which was accepted under the Trademark Rule 2.119 (a).

Pursuant to 37 CFR § 2.119 (a) "where the prima facie proof of the certificate of service is rebutted by other evidence,... the Board may request that the person who signed the certificate of service submit an affidavit specifying when the paper was actually deposited with the United States Postal Service". The new evidence as presented and the Applicant having contested the receipt of the requests, would necessitate an affidavit from Opposers' attorneys with United States Postal Service evidence to support the affidavit. Pursuant to Cf. TBMP § 110.08 "A certificate of service is not the equivalent of a certificate of mailing".

The Board's ruling that "Based on the record before us, we find that applicant failed to respond to opposers' first set of request for admission (served on July 22,2002)."

"However, a formal notice or appearance is not required in order for the Board to accept a paper filed by an attorney. See TBMP Section 114.03". This argument is flawed because the exhibit presented by the attorneys as 'Exhibit D' when the Notice for Summary Judgement was filed did not indicate that the alleged requests were served on the Board (See Exhibit D). The Board, and the Applicant did not see the alleged requests prior to the Motion for Summary Judgement. It is therefore necessary for this ruling to be set aside. The attorneys for Opposes showed how confused they are, by submitting a Certificate Service but let it appeared as if it was a Certificate of Mailing. Pursuant to Cf. TBMP "a certificate of service is not the equivalent of a certificate of mailing".

The ruling of the Board was prejudicial against Applicant. The Applicant was not given the benefit of all reasonable doubt. Citing the case Lloyd's Food Product Inc V. Eli Inc "The nonmoving party must be given the benefit of all reasonable doubt as to whether genuine issue of material fact exist, and the evidentiary record on summary judgement, and all inferences to be drawn from the undisputed facts, must be viewed in light most favorable to the nonmoving party." See Lloyd's Food Products Inc V. Eli Inc 987 F. 2 d 766, 25 USPQ 2 de 2027 (Fed. Cir. 1993). The Board also cited this case stating " In a motion for summary judgement, the evidentiary record and all reasonable inferences to be drawn from the undisputed fact must be viewed in light most favorable to the nonmoving party". Even though this case was cited by the Board the ruling was not

adhered to because the nonmoving party was never given the benefit of all reasonable doubt. In view of the Applicant not been given the benefit of all reasonable doubt, the case was compromised, and the Applicant was prejudice. The judges' action was prejudicial against the nonmoving party (Applicant). This contravenes the case cited by the Board, and also by the Applicant. If the judges were not prejudicial then the ruling, "Finally we are not persuaded by applicant's argument that opposers' ... errors in moving brief constitute an admission that there is no likelihood of confusion. In the introductory paragraph of their moving brief, opposers state that ,There is not confusion between the parties' products, and therefore, no infringement". This statement is in contravention of the case cited by both the judges, and the Applicant. According to the case cited, the nonmoving party must be given the benefit of all reasonable doubt. Instead of siding with the nonmoving party (Applicant), thereby giving the Applicant the benefit of the doubt, the judges sided with the opposers. If the judges had ruled in accordance with the case cited, they would have accepted the attorneys for Opposer admission that, "there is no confusion between the parties, products, and therefore, no infringement".

Pursuant to Rule 60 (b) of FRCB the judgement against Applicant's mark should be reconsidered based on the evidence presented by the Applicant; evidence of mistake; evidence of inadvertence; evidence of excusable neglect; evidence of newly discovered evidence; evidence of deceit (fraud). The filing of the Motion for Summary Judgement was a willful act of deceit (fraud). The attorneys knew very well that the Applicants non-response to the paper was due to the fact that the correspondence containing the alleged requests were returned to them unopened. The Applicant therefore was not aware of the requests. The filing of the motion for Summary Judgement was a willful act of deceit (fraud)l when the attorneys used their filing of the motion to block the Applicant from filing a motion to compel them to produce documents and things requested. The factors presented are meritorious defense that the Applicant was not aware that the attorneys for Opposes were changing, nor was the Applicant aware of the alleged requests in the returned correspondence.

In view of the fact that the attorneys for the Opposes have opposed the Motion for Relief from Judgement, the Applicant believe that pursuant to TBMP § 317.03 the factors presented should be considered in determining the motion to vacate the judgement. Pursuant to TBMP § 317.03 among the factors to be considered in determining a motion to vacate a default judgement for failure to answer a complaint are whether the default was willful, and whether the defendant has a meritorious defense to the action. The evidence presented proves the Applicant's default was not wilful because the Applicant was not aware of the request. The Applicant has presented meritorious defense against the default.

The judges erred in making their ruling based on the claim under Section 2 (d). The Applicant did not admit to the requests because the alleged requests were never seen by the Applicant (See Exhibit A).

In view of the factors presented the Applicant is requesting that the Board consider a

retrial of the case under FRCP 55 (c) and FRCP 60 (b). For the Board to present itself as fair and impartial the factors as presented merits a retrial.

Pursuant to 37 CFR § 2.129 a request for a rehearing to reconsider is necessary, based on the evidence on record of the Applicant contesting the receipt of the alleged requests in Exhibit A. The record showed that Exhibit A was received by the Board on February 14, 2003 (See Exhibit E). Exhibit A contradicts the ruling of the judges. The Applicant did contest the receipt of the alleged requests. In accordance with 37 CFR 2,129 (c) the evidence on record in the form of Exhibit A, pursuant to TBMP rules require a rehearing for reconsideration.

Motion for Retrial under FRCP 55 (c) and FRCP 60 (b)

The Applicant is requesting that a new trial be conducted, and that the motion not be acted upon by the Interlocutory Attorney. The motion as filed merits the potential disposition of the proceeding. In view of the importance of this motion it would be improper Pursuant to 37 CFR § 2.127 (c) for the Interlocutory Attorney to make a ruling.

On May 28, 2003 the Applicant filed a timely motion under FRCP 60 (b) for the setting aside of the Summary Judgement. The Applicant hereby amends the motion filed to include FRCP 55 (c). Pursuant to FRCP 55 (c) and FRCP 60 (b) the Applicant seeks the relief from the judgement by way of a retrial.

The Applicant's motion filed on May 28, 2003 for relief was timely pursuant to 37 CFR § 2.129 (c). The brief filed on May 28, 2003 along with this paper should be reviewed by the Board in the retrial of the default judgement under FRCP 55 (c) and FRCP 60 (b). The Applicant is using the date May 28, 2003 as the date for timely filing a motion for reconsideration of judgement pursuant to 37 CFR § 2.129 (c). It is necessary that the Board accepts the date May 28, 2003 as a timely date for a retrial under FRCP 55 (c) and FRCP 60 (b).

The judgement under Section 2 (d) should be reconsidered. The Applicant challenges the Board's ruling that the evidence submitted was sufficient, and unopposed thereby the granting of the judgement in favor of Opposers. The evidence was not sufficient, and the Applicant had contested having any knowledge of the requests as evident by Exhibit A, "Defense against Motion for Summary Judgement". Exhibit A was never seen by the Judges during their deliberation. It is imperative for a retrial of the case before a panel of judges. This matter cannot be ruled on by the Interlocutory Attorney pursuant to 37 CFR § 2.127 (c).

Pursuant to 37 CFR § 2.120 (j) (3) (i) the Applicant has shown in this brief that the failure to respond to the alleged requests was due to excusable neglect (the non-opening of mails from unknown attorneys), and therefore not a willful act.


Had the attorneys for the Opposers certified, or registered the alleged requests this would have alerted the Applicant that the Correspondence was of significant importance, and therefore should be treated as such.

Let it again be noted that the Applicant was never made aware of the changing of the counsel for the Opposers Until sometime after the alleged date the papers were deposited in the custody of the United States Postal Service (See Exhibits B & C).

The attorneys for Opposers used deceit (fraud) to gain the default, having known that the Applicant never saw the alleged requests, because they were returned sealed, and unopened. The attorneys in seeking and gaining the default was an act of deceit (fraud). The attorneys used the filing of the motion to escape having to respond the Applicants requests served on them (See Exhibit F & Exhibit G).

CERTIFICATE OF MAILING

I Lenworth Alexander Hyatt hereby certifies that this correspondence is deposited in The United States Post Office as Certified Mail, addressed to The Chief Administrative Trademark Judge, Trademark Trial and Appeal Board at 2900 Crystal Drive, Arlington , VA 22202- 3513.

ON October 21, 2003 BY 
Date Lenworth Alexander Hyatt

CERTIFICATE OF SERVICE

I Lenworth Alexander Hyatt hereby certifies that this correspondence is deposited in The United States Post Office as Certified Mail, addressed to Gene S, Winter / Mark J. Speciner at St. Onge Steward Johnson & Reens, 986 Bedford St., Connecticut 06905-5619.

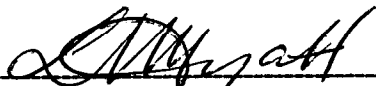
ON October 21, 2003 BY 
Date Lenworth Alexander Hyatt

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

RE : OPPOSITION NO. 151,757

**COLUMBIA INSURANCE COMPANY
&
H.H. BROWN SHOE COMPANY
VS.
LENWORTH ALEXANDER HYATT**

Defense against Motion for Summary Judgement

Pursuant to 37 CFR § 2.127 (d)) of The Trademark Trial and Appeal Manual of Procedure, Defendants submit the following affidavit, which is germane to the Motion for Summary judgement filed on December 18, 2002 , as Applicant's defense against motion.

1. On January 22, 2003, attorneys for Opposers respond to Applicant's initial defense to Motion for Summary Judgement, in favor of Nonmoving Party, "Applicant".
2. In its response attorneys admit on page 3, lines 15 & 16 to receiving Applicant's Request to Produce Documents and Things (See Exhibit A.).
3. Attorneys for Opposers admit to filing Motion for Summary Judgement four (4) days prior to the expiration of the time granted to respond to, Applicant's Request to Produce Documents and Things (See pages three & four of Exhibit A).
4. Attorneys for Opposers failed to respond to Applicant's Request to Produce Documents and Things, was due to their arrogance.
5. On page four (4) of Exhibit A, the attorneys for Opposers states' "In the fourth and fifth sentences, Applicant attempts to make hay from what are obviously typographic errors(sic)". Attorneys further state, "Once the typographical errors are corrected, this issue disappears (sic)" What typographical errors? Where is the correction?
6. On page four of attorneys response to Defense for Summary Judgement in favor of Nonmoving Party "Applicant ", it is alleged that in May 2002, the entire trademark was transferred to it, but failed to serve Notice of Appearance.
7. Attorney for Opposers failure to serve a timely Notice of Appearance is slighted as a 'technical issue'(See Exhibit A, page 4).
8. Applicants / Defendant did not receive the alleged discovery requests alluded to on page 5, of

Exhibit A.

9. Attorneys for Opposers failure to serve discovery request was probably another technical error.

10. Applicant / Defendant receipt of the Motion for Summary Judgement, but not the discovery request is a clear indication that the allege documents were not served.

It is appropriate for the Honorable Trademark Trial and Appeal Board to enter Summary Judgement, in favor of Nonmoving Party (Applicant /Defendant), because Applicant did not receive the alleged discovery request.

CERTIFICATE OF MAILING

I Lenworth Alexander Hyatt hereby certifies that this correspondence is being deposited with The United States Post Office as Certified Mail, addressed to The Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA. 22202 -3513.

ON February 6, 2003 BY LA Hyatt
Date Lenworth Alexander Hyatt

CERTIFICATE OF SERVICE

I Lenworth Alexander Hyatt hereby certifies that this correspondence was deposited with The United States Post Office as Certified Mail, to be served on attorneys for Opposers Gene S. Winter, and Mark J. Speciner, at St. Onge Steward Johnson & Reens LLC. , At 986 Bedford Street, Stamford, CT. 06905.

ON February 6, 2003 BY LA Hyatt
Date Lenworth Alexander Hyatt

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X	
COLUMBIA INSURANCE COMPANY and)
H.H. BROWN SHOE COMPANY, INC.,)
)
Opposers,)
)
v.)
)
LENWORTH ALEXANDER HYATT,)
)
Applicant.)
-----X	

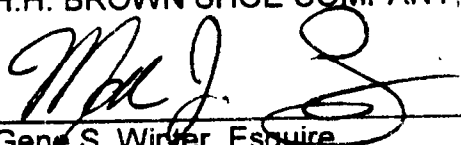
Opposition No. 91151757

NOTICE OF APPEARANCE

Pursuant to 37 C.F.R. §2.102(d) of the Trademark Rules of Practice,
Opposers Columbia Insurance Company, and H.H. Brown Shoe Company, Inc.
request that the appearance of Gene S. Winter, Arlana S. Cohen, Mark J.
Speciner, Kathryn G. Belleau and David Chen of the law firm of St. Onge
Steward Johnston & Reens, LLC, 986 Bedford Street, Stamford, Connecticut
06905-5619 be entered on their behalf in the above referenced matter.

COLUMBIA INSURANCE COMPANY
H.H. BROWN SHOE COMPANY, INC.

8/14/02
Date

By: 
Gene S. Winter, Esquire
Arlana S. Cohen, Esquire
Mark J. Speciner, Esquire
Kathryn G. Belleau, Esquire
David Chen, Esquire
Attorneys for Opposers
St. Onge Steward Johnston & Reens LLC
986 Bedford Street
Stamford, Connecticut 06905-5619
Telephone: (203) 324-6155
Facsimile: (203) 327-1096

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August, 2002, I placed a true and correct copy of the foregoing Notice of Appearance by placing same in the U.S. mail, postage prepaid, addressed to:

Lenworth Alexander Hyatt
P.O. Box 4864
Hollywood, FL 33083

8-15-02
Date

Carrie Ann Csizmadia
Carrie Ann Csizmadia

EXHIBIT C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 76/242,606
For the Mark Crown Design
Published in the Official Gazette on October 16, 2001 at

Columbia Insurance Company and H.H.
Brown Shoe Company, Inc.,

Opposers,

v.

Lenworth Alexander Hyatt,

Applicant.

Opposition No. 91151757

Commissioner for Trademarks
BOX TTAB - NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513

WITHDRAWAL FROM EMPLOYMENT PURSUANT TO 37 C.F.R. § 10.40(b)

Fish & Richardson P.C. hereby withdraws from employment as representative for
Opposers, Columbia Insurance Company and H.H. Brown Shoe Company, Inc. in the above-

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being
deposited with the United States Postal Service as first class mail with
sufficient postage on the date indicated below and is addressed to the
Commissioner for Trademarks, 2900 Crystal Drive, Arlington,
VA 22202-3513.

September 20, 2002
Date of Deposit

Signature

NICOLE E. GAGE
Typed or Printed Name of Person Signing Certificate

Applicant : Lenworth Alexander Hyatt
Serial No. : 76/242,606
Filed: : April 17, 2001
Mark : Crown Design
Page : 2

Attorney's Docket No.: 10294-602PP1

captioned opposition proceeding. Withdrawal is mandatory pursuant to 37 C.F.R. § 10.40(b) as Opposers have advised Fish & Richardson that they have hired St. Onge Steward Johnston & Reens LLC to serve as their representative in this proceeding.

The undersigned believes that Opposers will not be prejudiced by this withdrawal because Opposers have already employed another law firm to represent them in this proceeding and attorneys from such law firm entered an appearance in this proceeding on August 14, 2002.

Respectfully submitted,

Date: _____

September 20, 2002



Timothy A. French
FISH & RICHARDSON P.C.
225 Franklin Street
Boston, Massachusetts 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

Attorneys for Opposers,
COLUMBIA INSURANCE COMPANY and
H.H. BROWN SHOE COMPANY, INC.

Applicant : Lenworth Alexander Hyatt
Serial No. : 76/242,606
Filed: : April 17, 2001
Mark : Crown Design
Page : 3

Attorney's Docket No.: 10294-602PP1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing WITHDRAWAL FROM EMPLOYMENT PURSUANT TO 37 C.F.R. § 10.40(b) was served upon:

Attorney for Applicant:

Lenworth Alexander Hyatt
P.O. Box 4864
Hollywood, FL 33083

and

Attorney for Opposers:

Gene S. Winter, Esq.
St. Onge Steward Johnson & Reens LLC
986 Bedford Street
Stamford, Connecticut 06905-5619

by first class mail, postage prepaid, on this the 20th day of September, 2002.

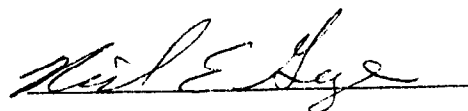


EXHIBIT D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X	
COLUMBIA INSURANCE COMPANY and)
H.H. BROWN SHOE COMPANY, INC.,)
)
Opposers,)
)
v.)
)
LENWORTH ALEXANDER HYATT,)
)
Applicant.)
-----X	

Opposition No. 91151757

**OPPOSERS' FIRST SET OF
REQUESTS TO ADMIT TO APPLICANT**

Pursuant to Rule 2.210 of the Trademark Rules of Practice and Rules 26 and 36 of the Federal Rules of Civil Procedure, Opposers, COLUMBIA INSURANCE COMPANY AND H.H. BROWN SHOE COMPANY, INC. request that Applicant, LENWORTH ALEXANDER HYATT (hereinafter "Applicant"), respond fully to the following Requests to Admit within the time set forth in Rule 36. If Applicant fails to respond to these Requests within the time for response, these requests will be deemed admitted as a matter of law pursuant to Rule 36. The definitions set forth in Opposers' First Set of Interrogatories to Applicant are incorporated herein by reference.

REQUESTS TO ADMIT

REQUEST NO. 1

Admit that Applicant's Mark is confusingly similar to Opposers' Mark.

REQUEST NO. 2

Admit that use of Applicant's Mark by Applicant or any licensee thereof will cause confusion in the marketplace among the consuming public as to the source or origin of Applicant's goods.

REQUEST NO. 3

Admit that Applicant was aware of Opposers' Mark when it filed to register Applicant's Mark with the United States Patent and Trademark Office.

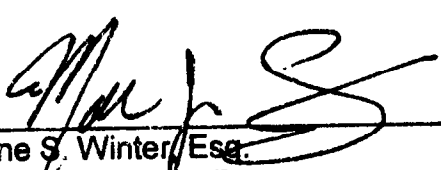
REQUEST NO. 4

Admit that Applicant does not have a bona fide intent to use Applicant's Mark in connection with the goods listed under Applicant's Mark.

Respectfully submitted,

COLUMBIA INSURANCE COMPANY
H.H. BROWN SHOE COMPANY, INC.

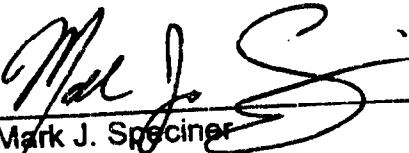
Date: July 22, 2002

By: 
Gene S. Winter, Esq.
Mark J. Speciner, Esq.
ST. ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street
Stamford, CT 06905
(203) 324-6155
Attorneys for Opposers

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of July, 2002, I placed a true and correct copy of the foregoing Opposer's First Set of Requests to Admit to applicant by placing same in the U.S. mail, postage prepaid, addressed to:

Lenworth Alexander Hyatt
P.O. Box 4864
Hollywood, FL 33083



Mark J. Speciner

EXHIBIT E

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Opposition No 151,757
 Trademark Trial
 &
 Appeal Board
 2900 Crystal Dr
 Arlington, VA 22203-3573

2. Article Number

(Transfer from service label)

PS Form 3811, August 2001

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No



02-14-2003

U.S. Patent & TMO for TM Mail Rcpt Dt. #30

Receipt for Merchandise

☐ C.O.D.

Restricted Delivery? (Extra Fee)

☐ Yes

7002 0510 0001 1622 1244

Domestic Return Receipt

102595-02-M-10:

EXHIBIT F

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

RE : OPPOSITION NO. 151,757

**COLUMBIA INSURANCE COMPANY
&
H.H. BROWN SHOE COMPANY
VS.
LENWORTH ALEXANDER HYATT**

REQUEST TO PRODUCE DOCUMENTS AND THINGS

Pursuant to 37 CFR § 2.120 of The Trademark Rules of Practice Defendant request that the new attorneys for Opposers Gene S. Winter, and Mark J. Speciner, at St. Onge Steward Johnson & Reens LLC, 986 Bedford Street, Siamford, CT. 06905, submit documents and things to support the allegation presented in the opposition to Serial No. 76/242,606, within 30 days by Postal Mail addressed to Defendant at P.O. Box 4864, Hollywood FL. 33083.

DOCUMENT REQUEST NO. 1

Documents and things to confirm Columbia Insurance Company is the owner of Registered Number 1,981,495 (H-Mark).

DOCUMENT REQUEST NO. 2

Documents and things to confirm H.H.. Brown Shoe Company, Inc. is licensed by Columbia Shoe Company to use the H-Mark .

DOCUMENTS REQUEST NO. 3

Documents and things to confirm Opposers use, and have used since 1979, the H-Mark trademark in Interstate Commerce, with footwear and the like.

DOCUMENT REQUEST NO. 4

Documents and things showing Serial No. 76/242,606 as applied to footwear so resembles the previously used H-Mark of Opposers, as used in connection with Opposers goods.

DOCUMENT REQUEST NO. 5

Documents and things to confirm Applicant Mark Serial No. 76/242,606 is likely to cause confusion, or mistake, or to deceive consumers as to any association between Opposers H-Mark .

DOCUMENT REQUEST NO. 6

Documents and things to confirm Serial No. 76/242,606 as applied to footwear so resemble the previously used H-Mark of Opposers, as used in connection with Opposers goods,

will likely dilute the distinctiveness of Opposers Trademark.

DOCUMENT REQUEST NO. 7

Documents and things to confirm that based upon the forgoing, the registration of Serial No. 76/242,606 will cause injury and damage to Opposers.

CERTIFICATE OF MAILING

I Lenworth Alexander Hyatt hereby certifies that this correspondence is being deposited with The United States Post Office as Certified Mail, addressed to The Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA. 22202 -3513.

ON December 2, 2002 BY LA Hyatt
Date Lenworth Alexander Hyatt

CERTIFICATE OF SERVICE

I Lenworth Alexander Hyatt hereby certifies that this correspondence was deposited with The United States Post Office as Certified Mail, to be served on attorneys for Opposers Gene S. Winter, and Mark J. Speciner, at St. Onge Steward Johnson & Reens LLC. , At 986 Bedford Street, Stamford, CT. 06905.

ON December 2, 2002 BY LA Hyatt
Date Lenworth Alexander Hyatt

EXHIBIT G

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Gene S. Winter /
 Mark J. Specimen
 St. Onge Steward
 Johnson & Rees LLC
 956 Bedford St
 Stamford CT 06905

2. Article Number

(Transfer from service label)

7001 2510 0003 7767 1920

PS Form 3811, August 2001

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Paul Bosle-

☒ Agent
☐ Addressee

B. Received by (Printed Name)

Paul Bosle

C. Date of Delivery

12/1/12

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

102595-02-M-103